

Attorney Silvia Stanciu
13 Facts
You Should Know About
Age Discrimination



Downtown Magazine sat down with [Silvia Stanciu](#), an employment litigator at [Phillips & Associates](#), to discuss the problem of age discrimination in today's workplace. Ms. Stanciu grew up in Romania and believes strongly in advocating for employee rights and helping people fight workplace discrimination. She graduated with a Juris Doctorate from the Maurice A. Dean, School of Law at Hofstra University in 2015, and today handles cases where employers have failed to meet their legal obligations towards employees. She is fluent in Spanish and Romanian and is passionate about celebrating New York's diversity and culture. Stanciu is a member of the New York City Bar Association and the New York Women's Bar Association and is admitted to practice in New York and New Jersey State and Federal courts.

Here are 13 situations to recognize when determining whether age discrimination is happening to you.



1. What is age discrimination?

SILVIA STANCIU: Age discrimination involves treating an employee or an applicant less favorably because of his or her age. The Age Discrimination in

Employment Act (ADEA) states that it is unlawful to discriminate against a person who is 40 years of age or older with respect to hiring, firing, promotions, layoffs, compensation, benefits, job assignments, and training. Some examples of age discrimination include forcing an older employee to retire, telling an older employee that he or she is not "fast enough," or refusing to hire an employee who is 40 or older because of his/her age. Harassing an employee for making a complaint of age discrimination is also unlawful, and may constitute retaliation.

2. We see more and more friends over the age of 50 being treated with such disrespect and they are paid \$50,000 or much less than what they are worth. How do you know if you are being discriminated against?

SS: You may have a claim for age discrimination if you are being harassed specifically because of your age. For example, if your supervisor or coworkers make comments such as, "You can't teach an old dog new tricks," "When are you going to retire," "We need to hire some fresh blood," you may be experiencing age-based workplace harassment. Similarly, if your supervisor forces you to retire and/or terminates you because he or she believes that you are "too old," you have a viable claim for age discrimination. Earning significantly less than your peers who are younger than 40, or being passed up for promotions, can also constitute examples of age discrimination.

3. I know my work is stellar because my supervisors keep adding duties to my job. Why are my reviews always negative?

SS: Some employers will hold on to longtime employees, especially those who are 40 years old or older because they are loyal and they do not have to invest additional time and effort in training. Unfortunately, many employers try to save money by placing unmanageable workloads on high-earning older employees in order to push them to resign on their own and then replace them with younger, "cheaper" employees. Unless you have some indication that you are being overworked and/or underappreciated *because* of your age, you may not have much legal recourse other than looking for an employer who recognizes and rewards your efforts.

4. I look younger than my age, but yet my boss refers to me as a 'senior' and it makes me feel uncomfortable. I'm scared to ask her to stop for fear of losing my job. What can I do?

SS: Words such as "senior" or "junior" are inherently age-based, and you are right to feel uncomfortable with their use in the workplace. If you want your boss to stop calling you "senior," you should state that it makes you uncomfortable and that you want it to stop. Otherwise, he or she may not understand that you are offended

and it will continue. Importantly, if he or she writes you up, suspends you, cuts your hours, refuses to promote you, or fires you because you complained about what you believed to be age discrimination, you may have a viable claim for retaliation.

5. I have not had a raise since I turned 50. Is this normal?

SS: Unless you have an employment contract that provides for scheduled raises, most raises are discretionary. However, your employer cannot withhold a raise *because* of your age, especially if you belong to a protected class (i.e. 40 or older). Moreover, your employer cannot punish you for making a complaint of age discrimination by withholding a scheduled raise or bonus. It is important to take into account all the circumstances of your employment—if you have stopped receiving yearly raises and/or bonuses since you turned 40 years old, while your (younger) co-workers have continued to receive scheduled raises, you may have a claim for age discrimination.

6. Almost everyone around me is 26-30 years old, all of my friends have been laid off how can I prevent this from happening?

SS: Employers are free to hire young, or younger, employees, but they cannot terminate current employees who are 40 or older solely *because* of their age. While you may not be able to keep your job, you should consider documenting the incidents that you believe indicate age discrimination in the workplace. For example, if you noticed that you and the other older employees are the only ones who are being laid off, left out of company meetings, or harassed, you may want to contact Human Resources and make a complaint. While it may not give you the job security you need, you may be able to refer to your complaint later, should you decide to pursue legal action. But note, that just because an employer is not allowed to terminate you because you made a complaint about age discrimination, it does not necessarily mean that the employer will not fire you for that reason. That, along with examples of incidents that are age-based, could constitute sufficient evidence to show age discrimination in the workplace.

7. They want me to go out drinking and to clubs when we are at conferences out of state, this is not for me, how can I decline and not lose my job? The comment was made, that people who don't drink cannot be trusted.

SS: Some companies promote social events as a means to "blow off steam" from stressful work environments. Others actually conduct business over "happy hour" drinks or rooftop parties. Unfortunately, these practices can be alienating to employees who are older, have families, and/or may not be interested in late-night activities like clubbing. You should simply tell your employer that you feel

uncomfortable with extreme drinking and partying environments. If you are concerned about your job, try to remind your employer that you bring value to the company in the daytime, and even bring up some of the projects you have been working on in the office. While you may get some flak for refusing to go out at night, your employer should take your request seriously. Otherwise, it sounds like you may not fit into the company culture, and you should look for a job that appreciates your work, rather than your alcohol tolerance. More importantly, if your employer and/or co-workers begin to harass you because of your refusal to go out at night by calling you "old school," "antiquated," or "uptight," you may have a claim for age discrimination. Unfortunately, merely stating that "people who don't drink can't be trusted" may not be sufficient, on its own, to make out a discrimination case.

8. My new boss is 24, he tells me that I remind him of his grandfather. At first, I was honored, but now it's become an uncomfortable joke. How do I approach this delicately?

SS: Sometimes, employees will "go along" with workplace discrimination because they are afraid to confront their supervisors or they fear that they may lose their jobs if they complain. However, if you feel uncomfortable with your boss' age-specific comments, you should make it clear that you do not find his remarks amusing. This will help your boss understand that you might be offended by his ageist "jokes." This will also put your boss on notice that he should not encourage, or allow, other co-workers, to join in the age-based harassment. If the jokes continue despite your complaint, or if you begin to experience workplace harassment *because* you complained, you may have a legal claim for retaliation.

9. Do I have to retire? Are there laws that say I have to leave or take the buyout package? What if I don't take the buyout but then they let me go?

SS: With some exceptions, you cannot be forced to retire if you are able to perform the essential functions of your job. Forcing an employee to retire is an age-based employment decision and it is generally unlawful. Some employers will try to "sweeten the pot" with a generous buyout or severance package, but you are still within your rights to question whether there was a discriminatory motive. If you do not sign a severance agreement waiving your rights to sue, you may be able to pursue legal action. "Retirement" is almost always associated with "older" workers, so employers would have to demonstrate that your age did not play a part in their decision.

10. My company said that they cannot offer me insurance because of my age, and made comments that their rates have gone up. Is this true?

SS: Unfortunately, older employees are more likely to want (and need) long-term and robust medical insurance coverage. Therefore, employers have to make a business decision that takes all employees needs into account. Some employers may not be able to afford to cover expensive insurance premiums, whether or not they hold a discriminatory animus toward the older employees who may need that insurance. It is true that rates will go up due to individuals who are prone to health problems. But, you should still make a complaint to management and/or Human Resources if you are experiencing workplace harassment because of your age and/or your age-related medical needs.

11. My boss insists on a book club and we have to participate every Friday at 5 p.m. Can I decline?

SS: While some employers' eccentric demands can be uncomfortable, they are generally not all illegal. In this situation, you can decline to attend the book club, but your job will likely not be protected if your boss just happens to be an avid reader. However, if your boss forces all employees to attend a weekly Bible study regardless of their religion or sincerely-held beliefs, and punishes those who decline, you may have a case for discrimination on the basis of religion. Employers cannot harass or terminate an employee because of their religion.

12. Are there any laws/rules when it comes to infringing on my off work hours, almost every day I get calls from my boss earlier in the morning long before 9 a.m. and later after 6 p.m., I'm worried if I don't answer but I also feel it's infringement on my time. When is it too much? I'm on a salary and I haven't had a vacation in years, Is there a law about this or can they just work us to death?

SS: Many industries often require their employees to work well beyond "business hours." Unfortunately, unless your employer is deliberately contacting you before and after your scheduled hours in order to harass you and/or retaliate against you for making a complaint of discrimination, you may not have much legal recourse.

13. My father recently passed, two questions: Can I be docked for the time I took off? And is there a law which sets a certain time for bereavement? Also, now I have to help with my aging mother, any advice?

SS: Although there generally are no laws that require companies to give employees time off for bereavement, many companies include bereavement leave in their employee policies. If your handbook does not provide for additional time for bereavement, your employer may be able to "dock" you for any time off in addition to your vacation time, for example. However, if you are caring for a family member with a serious health condition, you may be entitled to protected leave under the Family Medical Leave Act (FMLA).

Follow the #MeToo hashtag on social media for new developments and stories, and hop over to our [Humans of Downtown](#) section for more influential Downtown New Yorkers.

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